

**FIRST SUPPLEMENTAL DECLARATION OF TRUST**

**By**

**FIRST BANK & TRUST**

**and joined in by**

**BROOKINGS COUNTY, SOUTH DAKOTA**

Dated as of the 1st day of November 2020.

This instrument drafted by:

Meierhenry Sargent LLP  
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## **PARTIES**

THE FIRST AMENDED DECLARATION OF TRUST, made and entered into as of November 1, 2020 (the Trust Agreement), by FIRST BANK & TRUST, a bank duly organized and existing under the laws of the United States of America (the Trustee) and joined in by BROOKINGS COUNTY, a political subdivision of the State of South Dakota (the County), supplements the Declaration of Trust dated July 18, 2012;

## **WITNESSETH**

WHEREAS, the County has completed the renovation of the County Courthouse and now wishes to renovate and improve the jail (the Facility), to be located on certain real estate owned by the County (the Land), by means of a lease-purchase financing as authorized by Chapter 7-25, South Dakota Codified Laws, as amended (the Act); and

WHEREAS, the County has requested that the Trustee serve both as lessor under a Lease-Purchase Agreement and as trustee hereunder, and the Trustee has agreed to serve in those capacities; and

WHEREAS, the County and the Trustee have entered into a Ground Lease dated July 18, 2012 as supplemented by a Supplemental Ground Lease dated November 1, 2020 (the Ground Lease), whereby the County leases the Land to the Trustee; and

WHEREAS, the Trustee and the County have entered into a Lease-Purchase Agreement, dated July 18, 2012 as amended by the First Amendment to the Lease-Purchase Agreement dated November 1, 2020 (the Lease), by which the Trustee subleases its leasehold interest in the Land and leases its interest in the Facility to the County, and the County agrees, as the agent of the Trustee, to cause the Facility to be improved and equipped on the Land; and

WHEREAS, the County, in order to obtain the most advantageous financing, has requested the Trustee to create the trust and Trust Fund contemplated by this Declaration of Trust, to assign to the trust its interest in and to the Lease, including its right to receive Lease Payments thereunder, and the Ground Lease, and to issue Certificates of Participation, Series 2012 evidencing proportionate interest of the owners in a Lease-Purchase Agreement (the 2012 Certificates) in the trust, representing undivided interests in the Lease and the right to receive the Lease Payments thereunder; and

WHEREAS, the County, in order to obtain the most advantageous financing, has requested the Trustee pursuant to section 3.19, to assign to the trust its interest in and to the Lease, including its right to receive Lease Payments thereunder, and the Ground Lease, and to issue Certificates of Participation, Series 2020 (Limited Tax General Obligation) evidencing proportionate interest of the owners in a Lease-Purchase Agreement (the 2020 Certificates) in the trust, representing undivided interests in the Lease and the right to receive the Lease Payments thereunder; and

WHEREAS, Collier Securities, LLC (the Original Purchaser) has agreed to purchase the Certificates pursuant to a purchase contract, dated November 1, 2020;

**NOW, THEREFORE, THIS INDENTURE OF TRUST WITNESSETH:**

**GRANTING CLAUSE**

That the County, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the payment of good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure the payment of the principal of, and interest and any other sums payable on the Certificates outstanding hereunder from time to time, according to their tenor and effect, and to secure the observance and performance by the County of all covenants expressed or implied herein, does hereby grant, bargain, sell, convey, assign and pledge unto First Bank & Trust, Brookings, South Dakota, as Trustee, and unto its successors in trust, and to its assigns forever, all of the County's estate, right, title and interest in, to and under any and all of the following described rights and interest (herein called the "Trust Estate"):

**I**

The taxes levied pursuant to SDCL §7-25-1 and the present and continuing rights (a) to make claim for, collect, receive and receipt for any of the lease payments, tax revenues, issues and profits arising from the County's rights in the Lease and the Ground Lease, proceeds from any insurance policy maintained pursuant to Article VII of the Lease and all moneys and investments of all funds and accounts created in this Trust Agreement; and

**II**

The proceeds of the Certificates, including any investment earnings thereon, the proceeds of any certificates issued to refund the Certificates, in whole or in part, and such other tax revenues, funds, proceeds or grants at any time contributed by the County or any other party to the Trust Estate as additional security for the Certificates.

TO HAVE AND TO HOLD all and singular the Trust Estate, whether now owned or hereafter acquired, unto the Trustee and its respective successors in said Trust and assigns forever;

IN TRUST NEVERTHELESS, upon the terms and trust herein set forth for the equal and proportionate benefit, security and protection of all present and future Certificate Owners, from time to time, issued under and secured by this Trust Agreement without privilege, priority or distinction as to the lien or otherwise of any of the Certificates over any of the others of the Certificates with respect to County's payments under the Lease.

PROVIDED, HOWEVER, that if the County or its successors or assigns, shall well and truly pay, or cause to be paid, the principal of the Certificates and the interest due or to become

due thereon, at the times and in the manner mentioned in the Certificates according to the true intent and meaning thereof, and shall cause the payments to be made into the various funds as required herein or shall provide, as permitted hereby, for the payment thereof by depositing with the Trustee the entire amount due or to become due thereon, and to the extent not required to pay the Certificates, the Trustee shall have delivered all moneys in the funds and accounts created in this Trust Agreement pursuant to and to the extent required by Article IV hereof, and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Trust Agreement, and shall pay or cause to be paid to the Trustee all sums of money due or to become due to it in accordance with terms and provisions hereof, then, except as otherwise set forth herein, upon such final payment this Trust Agreement and the rights hereby granted shall cease, determine and be void, otherwise this Trust Agreement to be and remain in full force and effect.

THIS DECLARATION OF TRUST FURTHER WITNESSETH, and it is expressly declared, that all Certificates issued and secured hereunder are to be issued, authenticated and delivered and subject to the terms, conditions, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the County does hereby agree and covenant with the Trustee and with the respective Certificate Owners, from time to time, as follows:

## **ARTICLE I. DEFINITIONS AND RULES OF CONSTRUCTION**

**Section 1.01. Definitions.** For the purposes of this Trust Agreement the terms defined in the Lease and capitalized herein shall have the meanings ascribed to them in the Lease unless the context requires some other meaning. In addition, the terms defined below shall have the meanings ascribed to them as set forth below.

Act of Bankruptcy means the filing of a petition by the County under the United States Bankruptcy Code or any other bankruptcy or similar act of the United States or any state which may now or hereafter be enacted.

Additional Certificates means additional parity Certificates issued pursuant to Section 3.19 hereof.

Authorized Newspapers means a financial paper or a newspaper of general circulation in Brookings County, South Dakota.

Authorized Officer, when used with respect to the County, means the Chairman, County Finance Officer or any other person who is designated in writing by the County Finance Officer as an Authorized Officer for purposes of this Trust Agreement. The term "Authorized Officer," when used with respect to the Trustee, means any vice president and/or trust officer who is authorized to take the action in question on behalf of the Trustee.

Book Entry Certificates means that part of a Series for which a Securities Depository or its nominee is the Certificate Owner.

Beneficial Owner means the person who enjoys the benefits of owning the Certificates regardless of whose name is indicated as the Owner.

Business Day means any day upon which banks located in the State are not required or authorized to remain closed and on which the New York Stock Exchange is not closed.

Certificate Payment Date means June 1 and December 1 of each year commencing December 1, 2020.

Certificate Register means a record kept by the Certificate Registrar that lists the names and addresses of the Certificate Owners.

Certificate Registrar means First Bank & Trust, Brookings, South Dakota.

2012 Certificates means the Certificates of Participation, Series 2012 evidencing proportionate interest of the owners in a Lease-Purchase Agreement prepared and delivered by the Trustee pursuant to this Trust Agreement.

2020 Certificates means the Certificates of Participation, Series 2020 (Limited Tax General Obligation) evidencing proportionate interest of the owners in a Lease-Purchase Agreement prepared and delivered by the Trustee pursuant to this Trust Agreement.

Chairman means the Chairman of the County Commissioners.

Construction Account means the account established under Section 4.02.

Construction Contract means a contract or contracts for the construction of the Facility.

Construction Costs means all costs of payment of, or reimbursement for construction, installation and financing of the Facilities, including but not limited to, administrative costs, engineering costs, costs of feasibility, environmental and other reports, inspection costs, permits, fees, filing and recording costs, costs of obtaining title insurance or a title opinion, printing costs, reproduction and binding costs, legal fees, and charges, professional consultant fees, and charges and fees in connection with the foregoing; if the Certificates are secured by bond insurance or other credit enhancement, then to the extent permitted by the Code, the initial premium or fee and any premium or fee paid during the construction of the Facilities, for such bond insurance or other credit enhancement shall be treated as a part of the Construction Costs.

Cost of Issuance means all fees and expenses incurred by the County in connection with the execution and delivery of the Lease and the Issuance of the Certificates, including but not limited to, costs of preparing and printing the certificates, the Trust Agreement, the Lease, the Official Statement relating to the Certificates, and related documents; legal fees (including those of counsel to the Trustee, the County and the "Original Purchasers"); Rating Agency fees and the Trustee's initial fees.

County means Brookings County, South Dakota, an organized county under the laws of the State.

County Finance Officer means the Finance Officer of the County elected pursuant to the provisions of South Dakota Codified Laws Title 7 or, in the absence of such appointment or in the event the person so appointed is unable or incapable of acting in such capacity, the person appointed by the County's governing body to perform the duties otherwise performed by the Finance Officer, or her designee.

County Courthouse means the courthouse building which is located at 314 6th Street, Brookings, South Dakota.

Determination of Taxability means a final, non-appealable, determination by the Internal Revenue Service or of a court which determines that the interest component on the Certificates is includable in gross income for federal income tax purposes.

Event of Bankruptcy means the filing of a petition in bankruptcy (or other commencement of a bankruptcy or similar proceedings) by County as debtor, under the Bankruptcy Code or any other bankruptcy, reorganization, insolvency or other similar law as now or hereafter in effect.

Event of Default means any of the events specified in Section 7.01 to be an Event of Default. A "default" means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

Facility or Facilities means the County Courthouse and the Jail Renovation and Improvement Project.

Federal means the United States Government.

Ground Lease means the Ground Lease executed by Brookings County, as Lessor, and the Trustee, as Lessee dated July 18, 2012, the First Supplemental Ground Lease dated November 1, 2020, and any amendment thereof or supplement thereto..

Interest means the portion of any Lease Payment designated as and comprising of interest as described in Exhibit B attached to the Lease.

Issue Price means the initial offering price of the Certificates to the public at which price at least 10% of the Certificates of each maturity were sold.

Land means the real property described on Exhibit A of the Lease including any property added to or substituted for any portion of the Land and less any real property released from the Lease and the lien for the Trust Agreement, all pursuant to Article V of the Lease.

Lease Payments means the Lease Payments as defined in the Lease.

Lease means the Lease-Purchase Agreement, dated as of July 18, 2012 between the Trustee, as lessor, and the County, as lessee, the First Amendment to the Lease-Purchase Agreement dated November 1, 2020, and any amendment thereof or supplement thereto.

Lease Payment Date means a Payment Date as defined in the Lease.

Original Purchaser means First Bank & Trust, Brookings, South Dakota.

Outstanding when used with reference to the Certificates and as of any particular date, means all Certificates theretofore delivered except: (i) any Certificate canceled or fully paid by the Trustee at or before said date; (ii) any Certificate in lieu of or in substitution for which another Certificate shall have been delivered pursuant to this Trust Agreement; and (iii) for the sole purpose of determining the percentage of Certificate Owners consenting to an amendment to this Trust Agreement or authorizing any action by the Trustee or the exercise of any remedy hereunder, any Certificate owned by the County or any of its departments, agencies, institutions, instrumentalities or political subdivisions. For all other purposes Certificates owned by the County or any such entity which are not described in paragraphs (i) and (ii) shall be treated as Outstanding hereunder.

Outstanding Certificate means any Certificate which has been authenticated and delivered under the Trust Agreement except cancelled or surrendered or deemed to have been paid.

Owner or Certificate Owner or Owner of Certificates or any similar term, when used with respect to the Certificates, means the registered owner of any Outstanding Certificate.

Permitted Investments means, to the extent permitted by applicable law

(i) (A) bonds or interest-bearing notes or obligations of the United States, or those for which the full faith and credit of the United States are pledged for the payment of principal and interest.

(B) Securities either directly or indirectly guaranteed by the United States.

(C) Repurchase agreements fully collateralized by securities described in (1) (A) or (B), meeting the requirements of Sections 4-5-6 and 4-5-9, South Dakota Codified Laws.

(D) Shares of an open-end, no-load fund, rated in the highest short term or one of the two highest long-term rating categories by nationally recognized rating agencies, administered by an investment company registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933 and whose only investments are in securities described in (i) (A) and (B) and repurchase agreements described in (i) (C).

(E) Time deposits and interest-bearing accounts with any institution constituting a "qualified public depository" under Chapter 4-6A, South Dakota Codified Laws.

(ii) bonds or interest-bearing notes or obligations that are guaranteed as to principal and interest by a federal agency of the United States.

(iii) bonds, consolidated bonds, collateral trust debentures, consolidated debentures, or other obligations issued by federal intermediate credit banks established under the Federal Farm Loan Act, as amended; bonds or debentures of the Federal Home Loan Bank Board established



under the Federal Home Loan Bank Act; bonds and debentures of the Federal National Mortgage Association established under the National Housing Act, as amended; bonds of any federal home loan bank established under said act; obligations of the Federal Home Loan Mortgage Corporation; and any other obligation of a federal agency which obligation is rated in one of the two highest long term rating categories by nationally recognized rating agencies.

Prepayment Price means the price at which the Certificates are to be prepaid or redeemed (or purchased in lieu of prepayment or redemption, where applicable), determined as of the applicable prepayment date, as the case may be.

Principal Office when used with respect to the Trustee, means the principal office of the Trustee situated at 520 6<sup>th</sup> Street, Brookings, South Dakota 57006, at which the Trustee conducts its corporate trust business; or any office so designated by a successor trustee.

Rebate Certificate means the Tax Exemption Certificate and Agreement executed by the County on the date the Certificates are issued.

Record Date means the fifteenth day of the calendar month next preceding any Interest Payment Date, regardless whether such day is a Business Day.

Register means the Register maintained by the Registrar pursuant to Section 3.11 of the Trust Agreement.

Registrar means First Bank & Trust, Brookings, South Dakota, or any successor Registrar appointed by the Trustee pursuant to Section 6.06 hereof.

Redemption Account means an account established pursuant to Section 4.04 of this Agreement.

State means the State of South Dakota.

Stated Maturity means, when used with respect to any Certificate or installment of interest thereon, the date specified in such Certificate as the fixed date upon which principal of such Certificate or such installment of interest is due and payable.

Supplemental Trust Agreement means any indenture supplemental or amendatory to this Trust Agreement entered into by the County and the Trustee pursuant to Article VIII hereof.

Trust Agreement means this First Supplemental Indenture of Trust dated November 1, 2020.

Trust Fund means the trust fund created pursuant to Article IV hereof.

Trustee means First Bank & Trust, Brookings, South Dakota.

**Section 1.02. Rules of Construction.** Words of the masculine and feminine genders shall be deemed and construed to include the neutral gender. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa, and words

importing persons shall include corporations and associations, including public bodies, as well as natural persons.

The terms "hereby", "hereof", "hereto," "herein," "hereunder" and any similar terms, as used in this Trust Agreement, refer to this Trust Agreement.

## ARTICLE II. RECITALS AND REPRESENTATIONS

**Section 2.01. Lease of the Facility.** The Trustee and the County have entered into a Ground Lease under which the County has agreed to lease the Land to the Trustee. The Trustee and the County will also enter into the Lease, whereby the Trustee agrees to sublease the Land and lease and sell the Facility to the County and the County agrees to sublease the Land and lease and purchase the Facility from the Trustee.

**Section 2.02. Creation of Trust.** The Trustee, at the request of the County, has created a trust for the benefit of the Certificate Owners, from time to time of the Certificates issued hereunder. The trust created hereunder shall be irrevocable while any Certificates are outstanding hereunder. The corpus of the trust shall consist of (i) all of the Trustee's right, title and interest in and to the Ground Lease and the Lease, except the rights of the Trustee to compensation, reimbursement or indemnity from the County thereunder, which rights are specifically reserved by the Trustee, (ii) the Trust Fund created in Article IV hereof and (iii) any other property or rights hereafter assigned or contributed to the trust by the County or the Trustee by amendment or supplement hereto.

**Section 2.03. Deposit of Moneys.** (a) In order to induce the Trustee to proceed with the Ground Lease and to assure the County that the Construction Costs will be paid without delay and that the Facility will be available for lease without delay, the County has agreed to execute the Lease and from the proceeds of the sale of the Certificates the Trustee will deposit in the Trust Fund provided for in Section 4.01 hereof the following:

Account	Amount
Construction Fund	
Construction Fund (Costs of Issuance)	
Total	

**Section 2.04. Conditions Precedent Satisfied.** All acts, conditions and things required by law to exist, happen and be performed precedent to and in connection with the execution and entering into of this Trust Agreement have happened and have been performed in regular and due time, form and manner as required by law and the parties hereto are now duly empowered to execute and enter into this Trust Agreement.

### ARTICLE III. CERTIFICATES TERMS AND PROVISIONS

**Section 3.01. Preparation of Certificates.** The Trustee is hereby directed to prepare, execute and deliver to the Original Purchaser, 2020 Certificates in an aggregate principal amount of Seven Million Two Hundred Sixty Thousand and no/100 dollar (\$7,260,000) evidencing undivided ownership interests in the Lease Payments to be paid by the County under the Lease, in exchange for the amount specified in Section 2.03, which represents the face amount of the Certificates, plus accrued interest, less the amount of the Underwriter's Discount and less the cost of the Insurance Policy, in Federal or equivalent funds. The amount of the Underwriter's Discount shall, for all purposes of the Lease and this Trust Agreement, be deemed to have been received and paid out by the Trustee. The total stated principal amount of 2020 Certificates that may be issued hereunder is hereby expressly limited to \$7,260,000.

**Section 3.02. Form; Denominations; Medium of Payment.** The 2020 Certificates shall be delivered in the form of fully registered certificates without coupons in the denominations of \$5,000 (Five Thousand Dollars) each or any integral multiple thereof (which form shall be substantially in the form set forth in Exhibit B hereto attached and by this reference herein incorporated), with such further appropriate particular designation added to or incorporated in such title for the Certificates of the particular series as may be set forth in the provisions of this. The Certificates shall be payable in any lawful money of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

**Section 3.03. Date of 2020 Certificates.** The 2020 Certificates delivered on or after November 2, 2020, shall be dated as of the preceding Certificate Payment Date unless such date of delivery shall be a Certificate Payment Date, in which case they shall be dated as of such date of delivery.

**Section 3.04. Payment of Principal and Interest with Respect to Certificates.**

Principal due on the Certificates at maturity or redemption thereof, whichever is earlier, shall represent the sum of the portion of the Lease Payments designated as Principal coming due on the Certificate Payment Date in each year.

(a) The 2012 Certificates shall be payable as follows:

Date	Principal	Coupon	Interest	Total P+I	Fiscal Total
07/18/2012	-	-	-	-	-
06/01/2013	17,003.51	2.800%	43,820.00	60,823.51	60,823.51
12/01/2013	35,861.56	2.800%	24,961.95	60,823.51	-
06/01/2014	36,363.63	2.800%	24,459.89	60,823.52	121,647.03
12/01/2014	36,872.72	2.800%	23,950.80	60,823.52	-
06/01/2015	37,388.93	2.800%	23,434.58	60,823.51	121,647.03
12/01/2015	37,912.38	2.800%	22,911.14	60,823.52	-
06/01/2016	38,443.15	2.800%	22,380.36	60,823.51	121,647.03
12/01/2016	38,981.36	2.800%	21,842.16	60,823.52	-

06/01/2017	39,527.10	2.800%	21,296.42	60,823.52	121,647.04
12/01/2017	40,080.48	2.800%	20,743.04	60,823.52	-
06/01/2018	40,641.60	2.800%	20,181.91	60,823.51	121,647.03
12/01/2018	41,210.58	2.800%	19,612.93	60,823.51	-
06/01/2019	41,787.53	2.800%	19,035.98	60,823.51	121,647.02
12/01/2019	42,372.56	2.800%	18,450.96	60,823.52	-
06/01/2020	42,965.77	2.800%	17,857.74	60,823.51	121,647.03
12/01/2020	43,567.29	2.800%	17,256.22	60,823.51	-
06/01/2021	44,177.24	2.800%	16,646.28	60,823.52	121,647.03
12/01/2021	44,795.72	2.800%	16,027.80	60,823.52	-
06/01/2022	45,422.86	2.800%	15,400.66	60,823.52	121,647.04
12/01/2022	46,058.78	2.800%	14,764.74	60,823.52	-
06/01/2023	46,703.60	2.800%	14,119.91	60,823.51	121,647.03
12/01/2023	47,357.45	2.800%	13,466.06	60,823.51	-
06/01/2024	48,020.46	2.800%	12,803.06	60,823.52	121,647.03
12/01/2024	48,692.74	2.800%	12,130.77	60,823.51	-
06/01/2025	49,374.44	2.800%	11,449.07	60,823.51	121,647.02
12/01/2025	50,065.68	2.800%	10,757.83	60,823.51	-
06/01/2026	50,766.60	2.800%	10,056.91	60,823.51	121,647.02
12/01/2026	51,477.33	2.800%	9,346.18	60,823.51	-
06/01/2027	52,198.02	2.800%	8,625.50	60,823.52	121,647.03
12/01/2027	52,928.79	2.800%	7,894.73	60,823.52	-
06/01/2028	53,669.79	2.800%	7,153.72	60,823.51	121,647.03
12/01/2028	54,421.17	2.800%	6,402.34	60,823.51	-
06/01/2029	55,183.07	2.800%	5,640.45	60,823.52	121,647.03
12/01/2029	55,955.63	2.800%	4,867.89	60,823.52	-
06/01/2030	56,739.01	2.800%	4,084.51	60,823.52	121,647.04
12/01/2030	57,533.35	2.800%	3,290.16	60,823.51	-
06/01/2031	58,338.82	2.800%	2,484.69	60,823.51	121,647.02
12/01/2031	59,155.56	2.800%	1,667.95	60,823.51	-
06/01/2032	59,983.74	2.800%	839.77	60,823.51	121,647.02
Total	\$1,800,000.00	-	\$572,117.06	\$2,372,117.06	-

(b) The 2020 Certificates shall be in the aggregate principal amount of \$7,260,000, shall mature as follows:

<u>Maturity</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Yield</u>	<u>CUSIP®</u>
12/01/2021	\$ 320,000			
12/01/2022	355,000			
12/01/2023	370,000			
12/01/2024	380,000			
12/01/2025	390,000			
12/01/2026	400,000			
12/01/2027	415,000			
12/01/2028	425,000			
12/01/2029	430,000			
12/01/2030	440,000			
12/01/2031	450,000			
12/01/2032	460,000			
12/01/2033	465,000			
12/01/2034	475,000			
12/01/2035	485,000			
12/01/2036	495,000			

(b) Interest with respect to the Certificates shall be payable semiannually on June 1 and December 1 of each year to and including the date of maturity or redemption, whichever is earlier, commencing for the 2020 Certificates on June 1, 2021.

**Section 3.05. Legends.** The Certificates may contain or have endorsed thereon such provisions, specifications and descriptive words not inconsistent with the provisions of this Trust Agreement as may be necessary or desirable to comply with custom, or otherwise as may be determined by the County prior to delivery thereof.

**Section 3.06. Delivery of Initial Bonds.** The Certificates shall be executed in the name of and by the Trustee, as trustee under this Trust Agreement, by the manual signature of an Authorized Officer of the Trustee.

The Trustee shall authenticate and deliver the Certificates when there have been filed with it the following:

(a) A copy certified by the County Finance Officer of the County of the Resolution authorizing (1) the execution and delivery of the Lease (2) the execution and delivery of this Trust Agreement, and (3) the issuance, sale, execution and delivery of the Certificates;

(b) An original executed counterpart of this Trust Agreement;

(c) An original executed counterpart of the Ground Lease and Lease-Purchase Agreement;

(d) An opinion or opinions of Meierhenry Sargent LLP, addressed to the County and the Trustee, to the effect that this Trust Agreement and the Certificates have each been validly authorized, are binding and enforceable against the County, subject to bankruptcy and equitable principles, that the issuance of the Certificates have been duly authorized and that interest component on the Certificates is not included in gross income for federal income tax purposes under the Code;

(e) A request and authorization of the County, signed by the Chairman and the County Finance Officer, to the Trustee to authenticate and deliver the Certificates to such person or persons named therein upon payment for the account of the Issuer of a specified sum plus accrued interest to the date of delivery;

Simultaneously with the delivery of the Certificates, the Trustee shall apply, or arrange for the application of, the proceeds thereof in accordance with the Disbursement Requests in the form provided for in Exhibit A of the Trust Agreement, and dated the Issue Date.

Additional Bonds shall be delivered only upon compliance with Section 3.19 and the provisions of the supplemental indentures providing for their issuance

**Section 3.07. Interchangeability of Certificates.** Certificates, upon surrender thereof at the Principal Office of the Trustee with a written instrument of transfer satisfactory to the Registrar, duly executed by the Owner or his or her attorney duly authorized in writing, may, at the option of the Owner thereof, be exchanged for an equal aggregate principal amount of Certificates of the same maturity of other authorized denominations.

**Section 3.08. Negotiability.** The transfer and registry of the Certificates issued pursuant to this Trust Agreement shall be negotiable as provided by law subject to the provisions for registration and transfer contained in this Article and in the Certificates.

**Section 3.09. Transfer of Certificates.**

(a) The registration of each Certificate shall be transferable only upon the Certificate Register, which shall be kept for the purpose at the Principal Office of the Registrar, upon surrender thereof together with a written instrument of transfer satisfactory to the Trustee duly executed by the Owner or his or her duly authorized attorney. Upon the registration of the transfer and the surrender of any such Certificate, the Trustee shall provide, in the name of the transferee, a new Certificate or Certificates of the same aggregate principal amount and maturity as the surrendered Certificates.

(b) The Trustee shall deem and treat the person in whose name any Outstanding Certificate shall be registered upon the Certificate Register as the absolute Owner of such Certificate, whether such Certificate shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal and interest payments with respect to such Certificate and for all other purposes, and all such payments so made to any such Owner or upon the owner's order shall be valid and effectual to satisfy and discharge the liability upon such Certificate to the extent of the sum or sums so paid, and neither the Trustee, the County nor the Trustee shall be affected by any notice to the contrary.

**Section 3.10. Regulations with Respect to Exchange and Transfer.** In all cases in which the privilege of exchanging or transferring Certificates is exercised, the Trustee shall execute and deliver Certificates in accordance with the provisions of this Article. All Certificates surrendered in any such exchanges or transfers shall forthwith be canceled and destroyed by the Trustee. For every such exchange or transfer of Certificates, whether temporary or definitive, the Trustee may make a charge sufficient to reimburse it for any tax, fee or other governmental charge, required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. The cost of transfers and exchanges of Certificates shall be charged to the person requesting them.

**Section 3.11. Certificate Register.** The Registrar shall keep or cause to be kept at its Principal Office a Certificate Register, which shall at all times be open to inspection by the Trustee and the County; and, upon presentation for such purpose, the Registrar shall, under such

reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on the Certificate Register, certificates as hereinbefore provided.

**Section 3.12. Temporary Certificates.** Pending preparation of the definitive Certificates, any Certificates delivered under this Trust Agreement may be initially delivered in temporary form exchangeable for definitive Certificates when ready for delivery. The temporary Certificates may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the County, shall be without coupons and may contain such reference to any of the provisions of this Trust Agreement as may be appropriate. Every temporary Certificate shall be executed by the Trustee and be delivered by the Trustee upon the same conditions and in substantially the same manner as definitive Certificates. If the Trustee delivers temporary Certificates, it shall execute and furnish definitive Certificates without delay and, thereupon, the temporary Certificates shall be surrendered for cancellation at the Principal Office of the Trustee and the Trustee shall deliver in exchange for such temporary Certificates an equal aggregate principal amount of definitive Certificates of authorized denominations and of the same maturity and interest rate or rates. Until so exchanged, the temporary Certificates shall be entitled to the same benefits under this Trust Agreement as definitive Certificates delivered pursuant hereto.

**Section 3.13. Certificates Mutilated, Lost Destroyed or Stolen.** If any Certificate shall become mutilated, the Trustee, at the expense of the Owner of said Certificate shall execute and deliver a new Certificate of like tenor, maturity and number in exchange and substitution for the Certificate so mutilated, but only upon surrender to the Trustee of the Certificate so mutilated. Every mutilated Certificate so surrendered the Trustee shall be canceled by it and either destroyed or delivered upon the order of the County. If any Certificate shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee, and, if such evidence is satisfactory to the Trustee and if an indemnity satisfactory to the Trustee shall be given, the Trustee, at the expense of the Certificate Owner, shall execute and deliver a new Certificate of like tenor and maturity and numbered as the Trustee shall determine in lieu of and in substitution for the Certificate so lost, destroyed or stolen. The Trustee may require payment of an appropriate fee for each new Certificate delivered under this Section and of the, expenses which may be incurred by the Trustee in carrying out the duties under this Section 3.13, from the person requesting the same. Any Certificate issued under the provisions of this Section in lieu of any Certificate alleged to be lost, destroyed or stolen shall be equally and proportionately entitled to the benefits of this Trust Agreement with all other Certificates secured by this Trust Agreement. The Trustee shall not be required to treat both the original Certificate and any duplicate Certificate as being Outstanding for the purpose of determining the principal amount of Certificates which may be issued hereunder or for the purpose of determining any percentage of Certificates Outstanding hereunder, but both the original and duplicate Certificate shall be treated as one and the same notwithstanding any other provision of this Section 3.13, in lieu of delivering a new Certificate for a Certificate which has been mutilated, lost, destroyed or stolen and which has matured, the Trustee may make payment of such Certificate.

**Section 3.14. Place of Payment.** The Registrar is hereby appointed paying agent for the Certificates. The principal of all Certificates shall be payable at the Principal Office of the Registrar. Interest with respect to Certificates shall be payable by check, draft or electronic transfer of the Registrar mailed or wired on the Certificate Payment Date to the Owner of record

as of the fifteenth day (whether or not a business day) of the month preceding the Certificate Payment Date of such Certificates at the address shown on the Certificate Register.

**Section 3.15. Evidence of Signatures of Certificate Owners and Ownership of Certificates.** Any request, direction, consent, revocation of consent, or other instruments in writing required or permitted by this Trust Agreement to be signed or executed by Certificate Owners may be in any number of concurrent instruments of similar tenor, and may be signed or executed by such Certificate Owners in person or by their attorneys or agents appointed by an instrument in writing for that purpose. Proof of the execution of any such instrument, or of any instrument appointing any such attorney or agent, and of the holding and ownership of Certificates shall be sufficient for any purpose of this Trust Agreement (except as otherwise herein provided) if made in the following manner

(a) The fact and date of the execution by any Certificate Owner or the owner's attorney or agent of any such instrument and of any instrument appointing any such attorney or agent, may be proved by a certificate, which need not be acknowledged or verified, of an officer of any bank or trust company located within the United States of America, or of any notary public, or other officer authorized to take acknowledgments of deeds to be recorded in such jurisdictions that the person signing such instrument acknowledged before him or her the execution thereof. Where any such instrument is executed by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such certificate shall also constitute sufficient proof of authority.

(b) The ownership of Certificates shall be proved by the Certificate Register held by the Trustee under the provision of this Trust Agreement.

Nothing contained in this Article shall be construed as limiting the Trustee to such proof, it being intended that the Trustee may accept any other evidence of the matters herein stated which may reasonably seem sufficient to the Trustee. Any request or consent of the Owner of any Certificate shall bind every future Owner of the same Certificate in respect of anything done or suffered to be done by the County or the Trustee in pursuance of such request or consent.

**Section 3.16. Selection of Certificates for Redemption.** The order of redemption of the Certificates within any maturity, in accordance with Section 4.05, subsection (b), shall be established by lot in such manner as the Trustee shall determine.

**Section 3.17. Notice of Redemption.** When redemption is authorized or required pursuant to Section 4.05 hereof, the Trustee shall give to the Certificate Owners notice at the expense of the County of the redemption of the Certificates. Such notice shall specify (a) that the whole or a designated portion (in the case of redemption of a fully registered Certificate in part but not in whole) of the Certificates are to be redeemed, (b) the date of redemption, and (c) the place or places where the redemption will be made. Such notice shall further state that on the specified date of redemption there shall become due and payable upon each Certificate to be redeemed, the principal thereof and premium, if any, together with interest accrued to said date of redemption and that from and after such date of redemption interest thereon shall cease to accrue and be payable.



Notice of such redemption shall be given by mailing first class postage prepaid copies thereof to the Owners of any Certificates, whose Certificates are to be redeemed not less than thirty (30) days prior to such date of redemption. Such mailings shall not be a condition precedent to such redemption and failure so to mail any such notice shall not affect the validity of the proceedings for the redemption of the Certificates.

**Section 3.18. Effect of Redemption.** Notice having been given as aforesaid, and the moneys for the redemption, including premium, if any and interest to the applicable date of redemption, having been set aside in the Redemption Account, the Certificates to be redeemed shall become due and payable on said date of redemption, and, upon presentation and surrender thereof at the office or offices specified in said notice, said Certificates shall be paid at the unpaid principal amount thereof, plus any premium due, plus any unpaid and accrued interest to said date of redemption.

If, on said date of redemption, moneys for the redemption of all the Certificates to be redeemed, together with interest to said date of redemption, shall be held by the Trustee so as to be available therefore on such date of redemption, and, if notice of redemption thereof shall have been given as aforesaid, then, from and after said date of redemption, interest on the Certificates to be redeemed shall cease to accrue and become payable. If said moneys shall not be available on said date of redemption, such Certificates shall continue to bear interest until paid at the same rates as they would have borne had they not been notified for redemption. All moneys held by or on behalf of the Trustee for the redemption of particular Certificates shall be held in trust for the account of the Owners of the Certificates so to be redeemed for a period ending fifty-nine months from the date of redemption. All such moneys held by the Trustee at the end of such period, including interest or other investment income thereon, shall be paid to the County, and thereafter the Trustee shall have no responsibility for the redemption of Certificates presented for redemption after such date.

**Section 3.19. Additional Certificates.** No additional Certificates may be issued under this Trust Agreement unless allowed hereafter.

(a) Additional Certificates may be issued under and be equally and ratably secured by the Trust Agreement relating to a particular series of Certificates on a parity with the Certificates issued under such related Trust Agreement and any other Additional Certificates Outstanding, at any time and from time to time, for any of the following purposes.

(1) To provide funds to pay all or any part of the costs of completing the Facilities to which the Trust Agreement relates.

(2) To provide funds to pay all or any part of the costs of repairing, replacing or restoring the Facilities to which the Trust Agreement relates in the event of damage, destruction or condemnation thereto or thereof, but only to the extent that such costs exceed the net proceeds of the insurance or condemnation awards out of which such costs are to be paid pursuant to the applicable Lease.

(3) To provide funds to pay all or any part of the costs of acquisition, construction, furnishing and equipping of additions to the Facilities to which the Trust Agreement relates.

(4) To provide funds for refunding all or any portion of the Certificates of any series issued under a Trust Agreement then Outstanding, including the payment of any premium thereon and interest to accrue to the designated redemption date and any expenses in connection with such refunding.

(b) Before any Additional Certificates shall be issued under a related Trust Agreement, the County shall adopt a resolution (i) authorizing or approving the issuance of such Additional Certificates; (ii) authorizing or approving the execution of a Supplemental Trust Agreement for the purpose of issuing such Additional Certificates and fixing the amount and terms thereof and describing the Certificates to be refunded; and, if required, (iii) authorizing the execution of an amendment to the applicable Lease to provide for Lease Payments at least sufficient to pay amounts representing principal, premium, if any, and interest with respect to the Certificates then to be Outstanding (including the Additional Certificates to be issued) as the same become due.

(c) Except as to any difference in date, maturity, interest rate or redemption provisions, such Additional Certificates shall be on a parity with and shall be entitled to the same benefit and security of the related Trust Agreement as the Certificates and any other Additional Certificates Outstanding after the issuance of such Additional Certificates.

(d) Such Additional Certificates shall be executed substantially in the form and manner set forth in the related Trust Agreement, upon filing with the Trustee of the following:

(1) An original or certified copy of the resolution adopted by the County Board authorizing or approving the issuance of such Additional Certificates and the execution of such Supplemental Trust Agreement.

(2) An original executed counterpart of the Supplemental Trust Agreement providing for the issuance of such Additional Certificates.

(3) An original executed counterpart of the amendment to the related Lease, if required, which amendment shall clearly establish that the County has agreed that the Additional Certificates shall constitute Certificates for the purpose of computing the required Lease Payments.

(4) A request and authorization to the Trustee, on behalf of the County, executed by an Authorized County Representative, to execute the Additional Certificates and to deliver them to the Original Purchaser therein identified upon payment of the purchase price thereof to the Trustee.

(5) An opinion of counsel nationally recognized in the area of municipal finance to the effect that the issuance of such Additional Certificates will not result in amounts representing interest payable with respect to any Certificates then Outstanding (including such Additional Certificates) becoming includable in gross income for federal income tax purposes.

(6) In the case of Additional Certificates being issued to refund Outstanding Certificates, such additional document as shall be reasonably required by the Trustee to evidence that provision has been duly made in accordance with the provisions of the particular Trust Agreement for the payment of all of the certificates to be refunded.

(7) Such other certificates, statements, receipts and documents as the Trustee shall reasonably require for the delivery of such Additional Certificates.

(e) Except as described above, no obligations payable from the sources pledged for payment or security of the Certificates, shall be issued on a parity the Certificates, but obligations subordinate to the Certificates, may be issued upon the express written direction of the County.

#### **ARTICLE IV. ESTABLISHMENT AND ADMINISTRATION OF FUNDS AND ACCOUNTS**

**Section 4.01. Trust Fund.** There is hereby established with the Trustee a special trust fund to be designated as the "Brookings County Lease-Purchase Agreement Trust Fund" (the "Trust Fund"). The Trustee shall keep the Trust Fund separate and apart from all other funds and moneys held by it. Within the Trust Fund, there are hereby established the Construction Account more particularly described in Section 4.02 hereof, the Lease Payment Account more particularly described in Section 4.03 hereof, and the Redemption Account more particularly described in Section 4.04 hereof.

On November 1, 2020, the Trustee will receive and deposit in the Trust Fund the following:

Account	Amount
Construction Fund	
Construction Fund (Costs of Issuance)	
Total	

#### **Section 4.02. Establishment and Application of Construction Account.**

(a) Within the Trust Fund, there is hereby established a special account to be designated as the Construction Account (the "Construction Account"). The Trustee shall administer the Construction Account as provided in this Section.

(b) Except as provided in subsection (d) all moneys deposited in or transferred to the Construction Account pursuant to Sections 4.01 and 4.06 shall be disbursed only for the payment of Construction Costs and Costs of Issuance.

(c) There shall be credited to the Construction Account the moneys paid to the Trustee pursuant to Section 2.03 hereof, and any other moneys received by the Trustee for deposit in the Construction Account. Subject to the provisions of the Lease, the Trustee shall use the moneys in the Construction Account to pay the Construction Costs of the Facility as follows (1) the Construction Costs due under a Construction Contract shall be paid upon receipt of a

Disbursement Request attached hereto as Exhibit A completed and executed by a County officer; and (2) other construction Costs and Cost of Issuance shall be paid upon receipt of a Disbursement Request attached hereto as Exhibit A completed and executed by a County officer.

So long as the Trustee relies in good faith upon the Disbursement Request provided for above, it shall have no liability on account of disbursements from the Construction Account made in accordance with the requisition. The County shall indemnify and hold the Trustee harmless against any loss, cost or damage suffered by the Trustee as a result of any disbursement made by the Trustee at the request of the County.

(d) After completion of the construction of that portion of the Facility to be paid for with the proceeds of a particular series of Certificates, the County shall deliver to the Trustee a certificate of completion executed by an Authorized Officer setting forth the amount of money, if any, required for the payment of the remaining Construction Costs of that portion of the Facility. Upon receipt by the Trustee of the certificate of completion stating that all Construction Costs of that portion of the Facility have been paid, the Trustee shall transfer any amounts representing proceeds (including investment proceeds) remaining in the Construction Account into the Lease Payment Account.

(e) No amounts shall be withdrawn or transferred from or paid out of the Construction Account except as provided in this Article IV and Section 6.04.

#### **Section 4.03. Establishment and Application of Lease Payment Account.**

(a) Within the Trust Fund, there is hereby established a separate account to be designated and referred to herein as the "Lease Payment Account." Such account shall be maintained by the Trustee until the Lease Payments are paid in full pursuant to the terms of the Lease, or the County has paid the entire Purchase Price in accordance with Article VIII of respective Lease, or this Trust Agreement is terminated. The Trustee shall administer the Lease Payment Account as provided in this Section and Section 4.06.

(b) In addition to the moneys required to be deposited in the Lease Payment Account pursuant to Sections 4.01, 4.02 and 4.06, except as provided in Section 4.04, all Lease Payments, and all other moneys received by the Trustee with respect to the Lease or the Land and the Facility shall be deposited by the Trustee in the appropriate account of the Lease Payment Account immediately upon their receipt.

(c) The Trustee shall withdraw from the Lease Payment Account on the Business Day preceding each Certificate Payment Date, an amount equal to the principal and interest payments due with respect to the Certificates on such Certificate Payment Date, and shall transmit the same to the Registrar to be applied to the payment of principal and interest payments due with respect to the Certificates on such Certificate Payment Date.

(d) The Trustee shall transfer to the Redemption Account from the Lease Payment Account, all moneys on hand or received in the Lease Payment Account which are to be used for the redemption of Certificates in accordance with Section 4.05(a).

(e) No amounts shall be withdrawn or transferred from or paid out of the Lease Payment Account except as provided in this Article IV and Section 6.04.

**Section 4.04. Establishment and Application of Redemption Account.**

(a) Within the Trust Fund there is hereby established a separate account to be designated and referred to herein as the "Redemption Account". The Trustee shall administer the Redemption Account as provided in this Section.

(b) The Trustee shall deposit in the Redemption Account as received, all moneys paid to it by the County pursuant to Section 6.2 and Article VIII of the Lease; and in the event of termination of the Lease pursuant to Section 4.5 or 10.2 of the Lease, all net proceeds received from the sale or other disposition of the Land and the Facility. Also, in the event of termination of the Lease pursuant to Section 4.5 or 10.2 of the Lease or the exercise by the County of its option purchase the Facility pursuant to Article VIII of the Lease, the Trustee shall transfer to the Redemption Account, all moneys on hand in the Lease Payment Account not needed to pay principal and interest due or past due on the Certificates. All of said moneys shall be set aside in the Redemption Account for the purpose of redeeming the Certificates and shall be applied on or after the date of redemption designated pursuant to Section 4.05 hereof to the payment of principal and interest with respect to the Certificates to be redeemed upon presentation and surrender of such Certificates.

(c) Notwithstanding any other provision of this Trust Agreement, except as provided in subsection (d), all moneys on hand in the Redemption Account which will not be used for the redemption of the Certificates within 30 days after the date of its deposit or transfer to said Account, shall be invested at a "yield" (as hereinafter defined) not exceeding the "yield" on the Lease, computed in accordance with the United States Internal Revenue Code of 1986 and the regulations promulgated thereunder, unless the County obtains and delivers to the Trustee an opinion of an attorney or firm of attorneys nationally recognized as bond counsel stating that the investment of such moneys may be made without restriction as to yield or may be made subject to another yield limitation, in which event the moneys in said Redemption Account may be invested in accordance with such opinion. Investment of moneys subject to the yield restrictions herein provided shall be made by the purchase of United States Treasury Certificates of Indebtedness State and Local Government Series, or United States Treasury Notes -State and Local Government Series, or United States Treasury Bonds - and Local Government Series maturing on or immediately preceding the date of redemption of the Certificates to be redeemed.

(d) Moneys held by the Trustee for the payment of Certificates which have been called for redemption and the interest thereon, after the date set for redemption, may be invested, at the written request of the County, in Permitted Investments without restriction as to yield. Moneys held in the Redemption Account after the date on which such moneys are to be applied for the redemption of the Certificates, shall, upon redemption of all Outstanding Certificates, or upon expiration of the applicable time period specified in Section 3.18 hereof, whichever occurs first, be paid to the County.

**Section 4.05. Redemption.**

(a) The 2012 Certificates maturing on June 1, 2032 are subject to redemption, in whole or in part on or after December 1, 2022, at a redemption price equal to the principal amount to be redeemed, plus accrue to the date fixed for redemption.

(b) The 2020 Certificates maturing on December 1, 20\_\_\_\_ are subject to redemption, in whole or in part on or after December 1, 20\_\_\_\_, at a redemption price equal to the principal amount to be redeemed, plus accrue to the date fixed for redemption.

Such redemption may be made from moneys received due to the exercise by the County of its option to prepay Lease Payments pursuant to Article VIII of the Lease, including any moneys transferred from the Lease Payment Account to the Redemption Account for this purpose.

(b) Certificates are subject to redemption in whole at any time or in part from any net insurance or condemnation proceeds deposited with the Trustee for the purpose of redemption pursuant to Article VI of the Lease. Such redemption shall occur on any Business Day selected by the Trustee for which adequate notice pursuant to Section 3.09 may be given, at a redemption price equal to 100% of the aggregate principal amount of the Bonds to be redeemed plus accrued interest to the redemption date.

**Section 4.06. Deposit and Investment of Moneys in Funds.**

(a) All moneys held by the Trustee in the Trust Fund shall be deposited or invested in Permitted Investments, pursuant to written instructions of an Authorized Officer of the County provided that moneys in the Lease Payment Account and the Redemption Account may be invested only in investments described in paragraph (i) of the definition of Permitted Investments. If the County does not provide the Trustee with written instructions for such investment, the Trustee shall invest such moneys in Permitted Investments so as to obtain the highest yield which Trustee deems practicable, having due regard for the safety of such moneys and for the dates upon which such moneys will be required for uses and purposes specified in this Trust Agreement.

(b) All interest or income on the Construction Account shall be retained in the Construction Account until such Construction Account is closed pursuant to Section 4.02(d) hereof.

(c) All interest or income received by the Trustee on investment of the Lease Payment Account established pursuant to Section 4.03 hereof shall be retained in said Account and be applied to the payment of delinquent payments due on the Certificates, if any, and otherwise shall be applied as set forth in subsection (d) of this Section.

(d) Subsequent to the closing of the Construction Account, and provided that there are no delinquent Lease Payments, amounts retained or deposited in or transferred to the Lease Payment Account pursuant to subsection (c) shall be applied as a credit against the next Lease

Payment due from the County under the Lease following the date of deposit or transfer. At the time of deposit or transfer of said moneys in or to the Lease Payment Account, the Trustee shall report the amount thereof to the County and the amount of the next Lease Payment payable by the County under the Lease shall be reduced by an amount equal to the amount of said deposit or transfer.

(e) The Trustee shall not be liable for any loss resulting from the making or disposition of any investment pursuant to this Section, except where such loss arises out of the Trustee's wrongful or gross negligent act or failure to act. Any loss not resulting from the Trustee's wrongful or gross negligent conduct shall be charged to the account with respect to which such investment was made.

(f) The County covenants and agrees that it will at all times direct the Trustee to invest the moneys held in the Trust Fund in a manner which will not violate the provisions of the Code and the regulations promulgated thereunder from time to time.

(g) Upon payment by the County of all Lease Payments set forth in Exhibit B to the Lease, or to the Prepayment Price for all of the Land and the Facility pursuant to Article VIII of the Lease, and the payment or redemption of all Certificates and the interest coming due thereon or the provision for the payment thereof as provided in Section 7.02 hereof, and the payment of all amounts owed to the Trustee under Section 6.04 hereof, all moneys remaining on hand in the Trust Fund shall be paid to the County.

**Section 4.07. Arbitrage Rebate.** Unless and until the Trustee receives an opinion of Bond Counsel to the effect that the provisions of this Section are no longer required in order for the Interest component of the Lease Payments to be exempt from federal income taxation, the County will obtain and retain the records described in the Rebate Certificate. There shall then be established a separate account to be designated and referred to herein as the "Rebate Account." The County may contract with consultants or other persons to provide arbitrage rebate computation services, and the County agrees to pay the fees and expenses of such consultants or other persons. The County shall deposit in the Rebate Account such amounts, if any, as to comply with the arbitrage rebate requirements. The provisions of this Section and the Rebate Certificate may be superseded or modified by an instrument in writing signed by Bond Counsel, and this Section and the Rebate Certificate shall be deemed to be amended by any such instrument from and after the date on which such instrument is delivered to the Trustee.

The Trustee shall maintain records of all deposits to and disbursements from the Trust Fund, and of all investment of moneys in the Trust Fund and income therefrom. Unless otherwise advised in writing by Bond Counsel, the Trustee shall treat the Lease Payment Account as a bona fide debt service account and therefore not subject to arbitrage rebate, but the Trustee shall nevertheless maintain records with respect to the Lease Payment Account in the same manner as the other Accounts in the Trust Fund.

## ARTICLE V. COVENANTS; DEFAULT AND LIMITATION OF LIABILITY

**Section 5.01. County to Perform Agreement.** The County covenants and agrees with the Owners of the Certificates, to perform all obligations and duties imposed on it under the Lease.

**Section 5.02. Trustee to Perform Agreement.** The Trustee covenants and agrees with the Owners of the Certificates, to perform all obligations and duties imposed on it under the Lease.

**Section 5.03. Notice of Non-Payment.** In the event of delinquency in the payment of Lease Payments due by the County pursuant to the Lease, the Trustee shall immediately give written notice of the delinquency and the amount thereof to the County.

**Section 5.04. Action on Default.** Upon the occurrence of an event of default by the County under Section 10.1 of the Lease, and in each and every such case during the continuance of such event of default, the Trustee or the Owners of not less than a majority in aggregate principal amount of Certificates at the time Outstanding shall be entitled, upon notice in writing to the County and the Trustee, to enforce the rights and exercise the remedies provided to the Trustee in the Lease, as appropriate.

**Section 5.05. No Obligation by the County to Owners.** Except for the payment of Lease Payments when due in accordance with the Lease and the performance of the other covenants and agreements of the County contained in the Lease and in this Trust Agreement, the County shall have no obligation or liability to the Certificate Owners with respect to this Trust Agreement or the terms, execution, delivery or transfer of the Certificates, or the distribution of Lease Payments to the Owners by the Trustee.

**Section 5.06. No Obligation with Respect to Performance by Trustee.** Neither the County nor the Trustee shall have any obligation or liability to any of the other parties or to the Owners of the Certificates with respect to the performance by the Trustee of any duty imposed upon it under this Trust Agreement.

**Section 5.07. No Liability to Owners for Payment.** Except as provided in this Trust Agreement, the Trustee shall not have any obligation or liability to the Owners of the Certificates with respect to the payment of the Lease Payments by the County when due, or with respect to the performance by the County of any other covenant made by it in the Lease. Notwithstanding any other provision of this Trust Agreement, the Trustee shall not have any obligation or liability to the Owners of the Certificates with respect to the payment of the Lease Payments by the County when due, or with respect to the performance by the Trustee or the County of any covenants made by them in the Lease.

**Section 5.08. No Responsibility for Sufficiency.** The Trustee shall not be responsible for the sufficiency of the Lease or of the assignment made to it of rights to receive moneys pursuant to the Lease, or the value of or title to the Land and the Facility. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by



it under the terms of and in accordance with this Trust Agreement, except where such loss arises out of the Trustee's wrongful or gross negligent act or failure to act.

**Section 5.09. Indemnification to Trustee.** The County shall and hereby agrees to indemnify and hold harmless the Trustee, without any payment being made by the Trustee, from and against all claims, losses, liability and damages, including legal fees and expenses, arising out of (i) any breach or default on the part of the County in the performance of any of its obligations under this Trust Agreement or the Lease, if such breach or default is reduced to a written settlement or a judgment favorable to the Trustee, (ii) any tortious act or failure to act of the County or of any officer, servant or employee of the County with respect to the Land and the Facility, or (iii) the authorization of payment of the Construction Costs by the County. Indemnification for any tort mentioned in this Section shall be limited to the extent and in the amounts provided for by South Dakota law.

## ARTICLE VI. THE TRUSTEE

**Section 6.01. Employment of Trustee.** In consideration of the recitals hereinabove set forth and for other valuable consideration, the Trustee and the County hereby agree to employ the Trustee to receive, hold, invest and disburse the moneys to be paid to it pursuant to the Lease for credit to the various accounts in the Trust Fund established by this Trust Agreement; to prepare, execute, deliver and deal with the Certificates; and to apply and disburse the Lease Payments received from the County to the Owners of Certificates; and to perform certain other functions; all as herein provided and subject to the terms and conditions of this Trust Agreement.

**Section 6.02. Acceptance of Employment.** In consideration of the compensation herein provided for, the Trustee accepts the employment above referred to subject to the terms and conditions of this Trust Agreement.

**Section 6.03. Trustee; Duties, Removal and Resignation.** By executing and delivering this Trust Agreement, the Trustee accepts the duties and obligations of the Trustee provided in this Trust Agreement, but only upon the terms and conditions set forth in this Trust Agreement.

In carrying out its duties and exercising its powers under this Trust Agreement, the Trustee shall exercise that degree of care under the circumstances then prevailing which persons of prudence, discretion and intelligence exercise in the management of their own business affairs.

The Trustee and the County may by written agreement between themselves, or the holders of a majority in aggregate principal amount of all Certificates Outstanding may by written request, remove the Trustee initially a party to this Trust Agreement and any successor thereto, and may appoint a successor Trustee, but any such successor shall be a bank or trust company inside or outside the State of South Dakota having a combined capital (exclusive of borrowed capital) and surplus of at least Fifteen Million Dollars (\$15,000,000) and subject to supervision or examination by federal or state authority. The County shall have the right to approve any successor trustee having its principal place of business outside the State of South

Dakota. If such bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purposes of this Section the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

The Trustee may at any time resign by giving written notice to the Trustee and the County and by giving to the Certificate Owners notice by publication of such resignation at least once in Authorized Newspapers. Upon receiving such notice of resignation, the County shall promptly appoint a successor Trustee by an instrument in writing; provided, however, that in the event the County does not appoint a successor Trustee within sixty (60) days following receipt of such notice of resignation, the resigning Trustee may petition the appropriate court having jurisdiction to appoint a successor Trustee. Any resignation or removal of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee.

**Section 6.04. Compensation of the Trustee.** The Trustee shall be entitled to compensation from the County for the reasonable and customary fees, costs and expenses incurred in the acceptance, administration and performance of the trust created hereby.

**Section 6.05. Protection to the Trustee.** The Trustee shall be protected and shall incur no liability in acting or proceeding in good faith upon any written resolution, notice, request, consent, waiver, certificate, statement, affidavit, voucher, bond, requisition or other paper or document which it shall in good faith believe to be genuine and to have been passed or provided pursuant to any of the provisions of this Trust Agreement, and the Trustee shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. The Trustee shall not be bound to recognize any person as an Owner of any Certificate or to take any action at his request unless such Certificate shall be deposited with the Trustee or satisfactory evidence of the ownership of such Certificate shall be furnished to the Trustee. The Trustee may consult with Independent Counsel with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith in accordance therewith.

Whenever in the administration of its duties under this Trust Agreement the Trustee shall deem it necessary to or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) shall be deemed to be conclusively proved and established by the certificate of an Authorized Officer of the County and such certificate shall be full warranty to the Trustee for any action taken or suffered under the provisions of this Trust Agreement upon the faith thereof, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

The Trustee may buy, sell, own, hold and deal in any of the Certificates issued pursuant to this Trust Agreement, and may join in any action which any Owner may be entitled to take with like effect as if the Trustee were not a party to this Trust Agreement. The Trustee, either as

principal or agent, may also engage in or be interested in any other unrelated financial or other transaction with the County or the Trustee, and may act as depositary, trustee, or agent for any committee or body of Owners of Certificates or other obligations of the County as freely as if it were not Trustee hereunder.

The recitals and representations in this Trust Agreement or in the Certificates shall be taken and construed as made by and on the part of the Trustee, and not by the Trustee, and the Trustee does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof.

The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers, and shall be entitled to advice of counsel concerning all matters trust and its duties hereunder, and the Trustee shall not be answerable for the default or misconduct of any such attorney, agent or receiver selected by it with reasonable care.

**Section 6.06. Paying Agent, Transfer Agent and Registrar.** The Trustee may, from time to time, appoint as its agent a bank or trust company, either within or without the State, to act as paying agent, transfer agent, or registrar for the Certificates. Any such agent may exercise any of the powers with respect to payment, transfer and registration of the Certificates to the same extent and in the same manner as the Trustee, subject to any limitation, not inconsistent with this Trust Agreement, imposed by the Trustee. The County shall pay the reasonable and customary fees of any such paying agent, transfer agent or registrar. Nothing contained in this Section 6.06 restricts the Trustee in appointing itself as paying agent, transfer agent and registrar for the Certificates. The Trustee does hereby appoint itself and shall act as the initial paying agent, transfer agent and registrar for the Certificates.

## **ARTICLE VII DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND CERTIFICATE HOLDERS**

**Section 7.01 Events of Default Defined.** Each of the following is an "Event of Default" hereunder:

(a) Default in the payment of any installment of interest on any Certificate when it becomes due and payable and continuance of such default for a period of sixty (60) consecutive days;

(b) Default in the payment of principal of (or redemption premium, if any, on) any Certificate when it becomes due and payable;

(c) Subject to the provisions of Section 7.07, default in the performance, or breach, of any covenant, warranty or representation of the County contained in this Trust Agreement (other than a default under subsections (a) and (b) of this Section);

(d) The occurrence of any Event of Default under the Lease or Ground Lease; or

(e) (1) An Event of Bankruptcy of the County; (2) the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or other similar official of the County or of any substantial portion of its property; or (3) the ordering of the winding up or liquidation of its affairs and the continuance of any such involuntary filing, appointment or order unstayed and in effect for a period of sixty (60) consecutive days.

If a Determination of Taxability occurs, there shall be no Event of Default resulting therefrom if the Certificates are redeemed pursuant to Section 3.16.

#### **Section 7.02 Remedies Upon Default.**

(a) If an Event of Default under Section 7.01 occurs and is continuing, the Trustee may, and upon the written request to the Trustee by the holder or holders of not less than majority in aggregate principal amount of the Certificates then Outstanding shall by written notice to the County, declare the principal of the Certificates and all interest accrued thereon to the date of acceleration to be immediately due and payable.

(b) At any time after such a declaration of acceleration has been made and before the entry of a judgment or decree for payment of the money due, the Trustee may, or the holders of not less than a majority in aggregate principal amount of the Certificates then Outstanding, may by written notice to the County and the Trustee, direct the Trustee to, rescind and annul such declaration and its consequences if:

(1) there has been paid to or deposited with the Trustee by or for the account of the County, or provision satisfactory to the Trustee has been made for the payment of a sum sufficient to pay: (A) all overdue installments of interest on the Certificates including any moneys due to Trustee under section 6.04; (B) the principal of, and redemption premium, if any, on any Certificates which have become due other than by such declaration of acceleration and interest thereon; (C) to the extent lawful, interest upon overdue installments of interest and redemption premium, if any; and (D) all sums paid or advanced by the Trustee hereunder, together with the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and Counsel prior to the date of notice of rescission; and

(2) all Events of Default, other than the nonpayment of principal of, redemption premium, if any, and interest on the Certificates which have occasioned such acceleration, have been cured or waived.

(c) No such rescission and annulment shall affect any subsequent default or impair any consequent right.

#### **Section 7.03 Additional Remedies.**

(a) The Trustee, upon the occurrence of an Event of Default may, and upon the written request of the holders of not less than a majority in aggregate principal amount of the Certificates Outstanding, shall: (a) exercise any or all rights of the County under the Lease and (b) proceed to protect and enforce its rights and the rights of the holders of the Certificates under this Trust Agreement by a suit or suits in equity or at law, either for the specific performance of any covenant

or agreement contained in this Trust Agreement or in the Lease or in aid of the execution of any power herein or therein granted, or for the enforcement of any other appropriate legal or equitable remedy, and the Trustee in reliance upon the advice of counsel may deem most effective to protect and enforce any of the rights or interests of the holders of the Certificates under the Certificates or this Trust Agreement.

(b) Without limiting the generality of the foregoing, the Trustee shall at all times have the power to institute and maintain such proceedings as it may deem expedient: (1) to prevent any impairment of the Trust Estate by any acts which may be unlawful or in violation of this Trust Agreement or the Lease, and (2) to protect its interests and the interests of the Certificate Owners in the Trust Estate and in the issues, profits, revenues and other income arising therefrom, including the power to maintain proceedings to restrain the enforcement of or compliance with any governmental enactment, rule or order which may be unconstitutional or otherwise invalid, if the enforcement of, or compliance with, such enactment, rule or order would impair the Trust Estate or be prejudicial to the interests of the Certificate Owners or the Trustee.

**Section 7.04. Trustee May File Proofs of Claim.**

(a) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding under the Bankruptcy Code relating to the County, any other obligor upon the Certificates or any property of the County, the Trustee (whether or not the principal of the Certificates shall then be due and payable by acceleration or otherwise, and whether or not the Trustee shall have made any demand upon the County for the payment of overdue principal, redemption premium, if any, and interest) shall be entitled and empowered, by intervention in such proceeding or other means:

(1) to file and prove a claim for the whole amount of the principal, redemption premium, if any, and interest owing and unpaid in respect of the Certificates then Outstanding or for breach of this Trust Agreement or Lease and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the holders allowed in such proceeding; and

(2) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any receiver, assignee, trustee, liquidator, sequestrator or similar official in any such judicial proceeding is hereby authorized by each holder to make such payments to the Trustee, and, in the event that the Trustee shall consent to the making of such payments directly to the holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee.

(b) No provision of this Trust Agreement empowers the Trustee to authorize or consent to or accept or adopt on behalf of any holders of the Certificates any plan of reorganization, arrangement, adjustment or composition affecting any of the Certificates or the rights of any holder thereof, or to authorize the Trustee to vote in respect of the claim of any holder in any proceeding described in subsection (a) of this Section.



**Section 7.05 Possession of Certificates Not Required.** All rights under this Indenture, the Lease and the Certificates may be enforced by the Trustee without possession of any Certificates or the production of them at trial or other proceedings. Any proceedings instituted by the Trustee may be brought in its name for itself or as representative of the Certificate Owners without the necessity of joining Certificate Owners as parties, and any recovery resulting from such proceedings shall, subject to Section 7.06, be for the ratable benefit of the Certificate Owners.

**Section 7.06 Notice and Opportunity to Cure Certain Defaults.** No default under Section 7.01(c) (other than the occurrence of a Determination of Taxability, to which this Section shall not be applicable) shall constitute an Event of Default until written notice of such default shall have been given by the Trustee or by the holders of at least 25% in aggregate principal amount of the Certificates Outstanding, and the Issuer shall have had thirty (30) days after receipt of such notice to correct such default or cause such default to be corrected, and shall have failed to do so. In the event, however, that the default be such that it cannot be corrected within such thirty (30) day period, it shall not constitute an Event of Default if corrective action is instituted by the County within such period and diligently pursued (as determined by the Trustee) until the default is corrected. The Trustee shall send a copy of each such notice to the County, but receipt of such notice by the County shall not be a condition precedent to further action by the Trustee.

**Section 7.07 Priority of Payment Following Event of Default.**

(a) If at any time after the occurrence of an Event of Default the moneys held by the Trustee under this Indenture (other than amounts in the Rebate Fund) shall not be sufficient to pay the principal of and interest on the Certificates as the same become due and payable, such moneys, together with any moneys then available or thereafter becoming available for such purpose, whether through the exercise of remedies in this Article or otherwise, shall, subject to subsections (b) and (c) of this Section, be applied by the Trustee as follows:

(1) first, to the payment of all amounts due the Trustee under Section 6.04;

(2) second, to the payment of all installments of interest on the Certificates then due and payable in the order in which such installments became due and payable, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment, ratably, according to the amounts due on such installments, without discrimination or preference; and

(3) third, to the payment of the unpaid principal amount of any of the Certificates which shall have become due and payable, in the order of due dates (other than Certificates called for redemption or contracted to be purchased for the payment of which moneys are held pursuant to the provisions of this Trust Agreement), with interest upon the principal amount of the Certificates from the respective dates upon which they shall have become due and payable, and, if the amount available shall not be sufficient to pay in full the principal of such Certificates due and payable on any particular due date, together with such interest, then to the payment first of such interest, ratably, according to the amount of principal due on such date, without any discrimination or preference.

(b) If the principal of all Certificates shall have become due and payable, whether by their terms or by a declaration of acceleration, and subject to subsection (a)(1) of this Section regarding payment to the Trustee, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Certificates, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, without any discrimination or preference.

(c) Whenever moneys are to be applied pursuant to the provisions of this Section, the Trustee may, in its discretion, establish and maintain a reserve for future fees and expenses, and may apply moneys to be distributed at such times, and from time to time, as the Trustee shall determine, having due regard for the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix a date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates, and for which moneys are available, shall cease to accrue. The Trustee shall also select a Record Date for such payment date. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any moneys and of the fixing of any such Record Date and payment date, and shall not be required to make payment to the holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

**Section 7.08 Certificate Owners May Direct Proceedings.** The owners of a majority in aggregate principal amount of the Certificates Outstanding shall, subject to the requirements of Section 8.02(e), have the right, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all remedial proceedings by the Trustee hereunder, provided that such direction shall not be in conflict with any rule of law or this Indenture and that the Trustee shall have the right to decline to follow any such direction which in the opinion of the Trustee would be unduly prejudicial to the rights of Certificate Owners not parties to such direction or would subject the Trustee to personal liability or expense. Notwithstanding the foregoing, the Trustee shall have the right to select and retain Counsel of its choosing to represent it in any such proceedings. The Trustee may take any other action which is not inconsistent with any direction under this Section.

**Section 7.09 Limitations on Rights of Certificate Owners.**

(a) No Certificate Owner shall have any right to pursue any other remedy under this Indenture or the Certificates unless: (1) an Event of Default shall have occurred and is continuing; (2) the owners of not less than majority in aggregate principal amount of all Certificates then Outstanding have requested the Trustee, in writing, to exercise the powers hereinabove granted or to pursue such remedy in its or their name or names; (3) the Trustee has been offered indemnity satisfactory to it against costs, expenses and liabilities reasonably anticipated to be incurred; (4) the Trustee has declined to comply with such request, or has failed to do so, within sixty (60) days after its receipt of such written request and offer of indemnity; and (5) no direction inconsistent with such request has been given to the Trustee during such 60-day period by the holders of a majority in aggregate principal amount of the Certificates Outstanding.



(b) The provisions of subsection (a) of this Section are conditions precedent to the exercise by any Certificate Owner of any remedy hereunder. The exercise of such rights is further subject to the provisions of Sections 7.09, 7.11 and 7.14. No one or more Certificate Owners shall have any right in any manner whatever to enforce any right under this Indenture, except in the manner herein provided. All proceedings at law or in equity with respect to an Event of Default shall be instituted and maintained in the manner herein provided for the equal and ratable benefit of the Certificate Owners of all Certificates Outstanding.

**Section 7.10 Unconditional Right of Certificate Owner to Receive Payment.**

Notwithstanding any other provision of this Indenture, any Certificate Owner shall have the absolute and unconditional right to receive payment of principal of, redemption premium, if any, and interest on the Certificates on and after the due date thereof, and to institute suit for the enforcement of any such payment.

**Section 7.11 Restoration of Rights and Remedies.** If the Trustee or any Certificate Owner has instituted any proceeding to enforce any right or remedy under this Indenture or the Lease, and any such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or such Certificate Owner, the Trustee and the Certificate Owners shall, subject to any determination in such proceeding, be restored to their former positions hereunder, and all rights and remedies of the Trustee and the Certificate Owners shall continue as though no such proceeding had been instituted.

**Section 7.12 Rights and Remedies Cumulative.** No right or remedy herein conferred upon or reserved to the Trustee is intended to be exclusive of any other right or remedy, but each such right or remedy shall, to the extent permitted by law, be cumulative of and in addition to every other right or remedy given hereunder or now or hereafter existing at law, in equity or otherwise. The assertion or employment of any right or remedy hereunder shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

**Section 7.13 Delay or Omission Not Waiver.** No delay or omission by the Trustee or any Certificate Owner to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of such Event of Default. Every right and remedy given by this Article or by law to the Trustee or the Certificate Owners may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or the Certificate Owners, as the case may be.

**Section 7.14 Waiver of Defaults.**

(a) The holders of a majority in aggregate principal amount of the Outstanding Certificates may, by written notice to the Trustee, waive any existing default or Event of Default and its consequences, except an Event of Default under Section 7.01(a) or (b). Upon any such waiver, the default or Event of Default shall be deemed cured and shall cease to exist for all purposes. No waiver of any default or Event of Default shall extend to or effect any subsequent default or Event of Default or shall impair any right or remedy consequent thereto.

(b) Notwithstanding any provision of this Indenture or the Lease, in no event shall any Person, other than all of the affected Certificate Owners, have the ability to waive any Event of Default under this Indenture or the Lease if such event results or may result, in the opinion of Bond Counsel, in interest on any of the Certificates becoming includable in gross income for federal income tax purposes.

**Section 7.15 Notice of Events of Default.** If an Event of Default occurs of which the Trustee has or is deemed to have notice, the Trustee shall give Immediate Notice thereof to the County and the Trustee shall give notice of such Event of Default to each holder of Certificates then Outstanding, provided, however, that except in the instance of an Event of Default under Section 7.01(a) or (b), the Trustee may withhold such notice to Certificate Owners if and so long as the Trustee in good faith determines that the withholding of such notice is in the interests of Certificate Owners, and provided, further, that notice to Certificate Owners of any Event of Default under Section 7.01(c) shall be subject to the provisions of Section 7.06 and shall not be given until the grace period has expired.

## **ARTICLE VIII. AMENDMENT, DEFEASANCE; ADMINISTRATIVE PROVISIONS**

**Section 8.01. Amendment.** This Trust Agreement and the Lease may be amended in writing by agreement among all of the parties hereto or thereto, but, except as provided in Section 8.02. hereof no such amendment shall become effective without the prior written consent of two-thirds in aggregate principal amount of the Certificates then Outstanding; provided that no such amendment shall impair the right of any Owner to receive his or her proportionate share of any Lease Payment in accordance with his or her Certificate.

**Section 8.02. Amendment to Trust Agreement or Lease Not Requiring Consent Certificate Owners.** The County and the Trustee may, without the consent of or notice to any of the Owners of the Certificates, enter into one or more amendments to the Trust Agreement or the Lease for one or more of the following purposes:

(a) To cure any ambiguity or formal defect or omission herein or to correct or supplement any provision herein or therein which may be inconsistent with any other provision herein or therein, or to make provisions with respect to matters or questions arising hereunder or thereunder provided such action shall not, in the judgment of the Trustee (with respect to which the Trustee may rely on an opinion of counsel), materially adversely affect the interests of the Owners of the Certificates;

(b) To grant or confer upon the Owners of the Certificates any additional rights, remedies, power or authority that may lawfully be granted or conferred upon them;

(c) To comply with the requirements of any State or federal securities laws or the Trust Indenture Act of 1939, as from time to time amended, if required by law or regulation lawfully issued thereunder;

(d) To provide for the appointment of a successor trustee or co-trustee pursuant to the terms hereof;

(e) To permit (i) if lawful, the issuance of Certificates in book entry form not evidenced by physical certificates, or (ii) Certificates in bearer form if, in the opinion of Bond Counsel, such action will not cause the interest Component of any Lease Payment to become includable in the gross income of the Owners of the Certificates thereof for federal income tax purposes;

(f) To subject to this Trust Agreement additional revenues, properties or collateral;

(g) To issue Additional Certificates as provided in Section 3.19 hereof.

**Section 8.03. Defeasance.** If and when the Certificates delivered pursuant hereto shall become due and payable in accordance with their terms, or shall become subject to redemption and have been called for redemption in accordance with Sections 3.16 and 3.17 hereof, and the whole amount of the principal and interest due and payable upon all of the Certificates shall be paid, or provision shall have been made for the payment of the same, by the deposit of cash or the types of securities listed in subsections (i), (ii) and (iii) of the definition of Permitted Investments or investments of the type described in Section 4.04, subsection (c), in an amount sufficient (together with interest earnings thereon) to provide for payment of said principal and interest to the maturity or earliest optional redemption date of the Certificates, and all administrative expenses shall have been paid or provided for, then and in that case, the right, title and interest of the Trustee, the County and the Trustee under this Trust Agreement shall thereupon cease, terminate and become void, and the Trustee shall assign and transfer to or upon the order of the County all property, money, investments and rights in the Land and the Facility (in excess of the amounts required for the foregoing) then held by the Trustee (including the Lease and all payments thereunder and all balances in any fund or account created under this Trust Agreement) and shall execute such documents as may be reasonably required by the County in this regard. All investments made pursuant to this Section shall be made in a manner which will comply with the covenant made by the County in Section 4.06, subsection (f).

**Section 8.04. Recording and Filing.** The County shall be responsible for the filing of the Ground Lease, the Lease and any financing statements related thereto. The Trustee shall be responsible for the filing of continuation statements for the financing statements or of any supplemental instruments or documents of further assurance as may be required by law in order to perfect the security interests created by the Lease.

**Section 8.05. Trustee to Keep Records.** The Trustee shall keep a copy of this Trust Agreement and books and records of all moneys received and disbursed under this Trust Agreement, which shall be available for inspection by the County, the Trustee and any Owner at any time during regular business hours.

**Section 8.06. Notices.** All written notices to be given under this Trust Agreement shall be given by mail to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other parties in writing from time to time:

If to the County

Brookings County  
314 6th Street  
Brookings, SD 57013  
Attn County Finance Officer

If to the Original Purchaser

First Bank & Trust  
520 6th Street  
PO Box 5057  
Brookings, SD 57006-5057

If to the Trustee

First Bank & Trust  
520 6th Street  
PO Box 5057  
Brookings, SD 57006-5057

If to the Registrar

First Bank & Trust  
520 6th Street  
PO Box 5057  
Brookings, SD 57006-5057

**Section 8.07. South Dakota Law.** This Trust Agreement shall be construed and governed in accordance with the laws of the State of South Dakota.

**Section 8.08. Severability.** Any provision of this Trust Agreement found to be prohibited by law shall be ineffective only to the extent of such prohibition, and shall not invalidate the remainder of this Trust Agreement.

**Section 8.09. Binding on Successors.** This Trust Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

**Section 8.10. Headings.** Headings preceding the text of the several Articles and Sections hereof, and the table of contents, are solely for convenience of reference and shall not constitute a part of this Trust Agreement or affect its meaning, construction or effect.

**Section 8.11. Execution in Counterparts.** This Trust Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

**IN WITNESS WHEREOF**, the parties have executed and attested this Trust Agreement by their officers thereunto duly authorized as of the date and year first written above.

**BROOKINGS COUNTY, SOUTH DAKOTA**

By \_\_\_\_\_  
Its Chairman

(SEAL)

ATTEST

\_\_\_\_\_  
Finance Officer

**FIRST BANK & TRUST**

By: \_\_\_\_\_  
Its: Vice President

First Bank & Trust signature page to Trust Agreement.

## EXHIBIT A- DISBURSEMENT REQUEST

The undersigned, being the County Finance Officer of Brookings County, South Dakota, the County named in the Declaration of Trust, dated as of November 1, 2020 (the Trust Agreement), by First Bank & Trust (the Trustee) and joined in by the County, hereby certify and request as follows

1. The County requests that the Trustee pay to the Person or Persons listed below, the amounts listed below, all of which constitute Costs of Issuance as defined in the Trust Agreement

<u>Amount</u>	<u>Nature of Cost</u>	<u>Name and Address of Payee</u>
	Underwriter	Collier Securities, LLC 110 South Phillips Avenue, Suite 203 Sioux Falls, SD 57104
	Bond Counsel	Todd Meierhenry Meierhenry Sargent LLP 315 S. Phillips Avenue Sioux Falls, SD 57104
	Trustee Fee	First Bank & Trust 520 6th Street PO Box 5057 Brookings, SD 57006-5057

2. The County requests reimbursement for the following items of Construction Cost (as defined in the Trust Agreement)

<u>Amount</u>	<u>Nature of Cost</u>	<u>Name and Address of Payee</u>
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3. The County requests that the Trustee pay to the persons listed below, the amounts listed below, which constitute Construction Cost.

<u>Amount</u>	<u>Nature of Cost</u>	<u>Name and Address of Payee</u>
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4. Each item set forth in paragraphs 2 and 3 hereof for which payment or reimbursement is requested is or was necessary in connection with the Facilities and none of such items has formed the basis for any previous payment from the Construction Account (as defined in the Trust Agreement).

5. The County is not now in default under the Lease-Purchase Agreement, dated as of \_\_\_\_\_, 2020, between the Trustee, as lessor, and the County.

WITNESS my hand this 1<sup>st</sup> day of November 2020

\_\_\_\_\_  
County Finance Officer



## EXHIBIT B- FORM OF CERTIFICATE

**\$7,260,000 CERTIFICATES OF PARTICIPATION, SERIES 2020**  
**Evidencing proportionate interest of owners**  
**in a Lease-Purchase Agreement**  
**between**  
**First Bank & Trust**  
**and**  
**Brookings County, South Dakota**

REGISTERED  
No. 1

REGISTERED  
\$7,260,000.00

Interest Rate

Maturity Date

Certificate Date

CUSIP

%

-

November 1, 2020

Registered Owner: First Bank & Trust  
520 6th Street  
PO Box 5057  
Brookings, SD 57006-5057

Principal Amount: **ONE MILLION EIGHT HUNDRED THOUSAND AND NO\100 DOLLARS**

This is to certify that the registered owner (named above) of this Certificates of Participation, Series 2020 (Limited Tax General Obligation Certificate) herein called the ("Certificate") is the owner of the proportionate interest hereinafter stated in that certain First Amendment to Lease-Purchase Agreement, dated as of November 1, 2020 (the "Lease"), by and between First Bank & Trust ("Trustee") and Brookings County, South Dakota (the "County"). The Trustee has appointed First Bank & Trust (the "Registrar"), as registrar, transfer agent and paying agent for the Certificates, under a First Supplemental Declaration of Trust dated November 1, 2020 by and between the Trustee and the County (the "Trust Agreement").

The registered owner of this Certificate is entitled to receive, subject to the terms of the Trust Agreement, on the maturity date specified above (the "Maturity Date"), or if selected for redemption, on the redemption date, the principal sum specified above, representing a portion of the Lease Payment designated as principal coming due on the Certificate Payment Date, as defined in the Lease, immediately preceding the Maturity Date, and to receive the registered owner's proportionate share of Lease Payment designated as interest coming due on the Certificate Payment Date, as defined in the Lease, immediately preceding June 1 and December 1 of each year commencing June 1, 2021 and continuing to and including the Maturity Date or the date of redemption, whichever is earlier. Said proportionate share of the Lease Payment designated as interest is the result of the multiplication of the aforesaid portion of the Lease Payment designated as principal coming due on the Certificate Payment Date, as defined in the Lease, immediately preceding the Maturity Date by the interest rate specified above per annum.

The Certificates are payable from the Lease Payment (as defined in the Lease) and the moneys held in the funds and accounts established pursuant to the Trust Agreement, by the Trustee subject to the provisions of the Trust Agreement permitting the application thereof for or to the purposes and on the terms and conditions set forth in the Trust Agreement. Terms not defined herein shall have the meaning set forth in the Trust Agreement.

THE OBLIGATION OF THE COUNTY TO MAKE LEASE PAYMENTS IS ABSOLUTE AND UNCONDITIONAL AND THE COUNTY HAS LEVIED A TAX, NOT TO EXCEED 90 CENTS PER THOUSAND, FOR THE PAYMENT OF LEASE PAYMENTS WHEN DUE.

The Trustee has no obligation or liability to the Certificate owners for the payment of interest or principal portions pertaining to the Certificates; the Trustee's sole obligation is to administer, for the benefit of the County and the Certificate owners, the various funds and accounts established in the Trust Agreement. The Trustee has no obligation to pay any portion of the interest or principal pertaining to the Certificates from any source other than the funds and accounts established in the Trust Agreement as described herein and the payment of such interest or principal is not a liability or charge upon the credit of the Trustee.

All amounts payable hereunder are to be paid in lawful money of the United States of America, which at the time of payment is legal tender. The principal payable on all Certificates shall be payable at the principal office of the Registrar in Brookings, South Dakota to the owner of record as of the fifteenth day (whether or not a business day) of the month immediately preceding an Interest Payment Date. Interest payable on all Certificates shall be paid by electronic transfer, check or draft of the Registrar mailed or transferred on the Certificate Payment Dates to the owners at their addresses recorded on the Certificate register.

This Certificate has been executed by the Trustee pursuant to the terms of the Trust Agreement. Copies of the Trust Agreement are on file at the office of the County Finance Officer and at the principal office of the Trustee, and reference to the Trust Agreement and any and all amendments thereto is made for a description of the pledges and covenants of the County securing the Certificates, the nature, extent and manner of enforcement of such pledges, the rights and remedies of the registered owners of the Certificates with respect thereto and the other terms and conditions upon which the Certificates are delivered thereunder. To the extent and in the manner permitted by the terms of the Trust Agreement, certain provisions of the Trust Agreement may be amended by the parties thereto without consent of the owners of the Certificates, while other amendments are permitted only with the written consent of the owners of at least two-thirds in principal amount of the Certificates then outstanding.

This Certificate shall be transferable only upon the Certificate register, which shall be kept for that purpose at the principal office of the Registrar, upon surrender hereof together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or the owner's duly authorized attorney. Upon the registration of the transfer, and the surrender of this Certificate, the Registrar shall provide in the name of the transferee, a new fully registered Certificate or Certificates of the same maturity and aggregate principal amount as the surrendered Certificates. The Registrar may treat the registered owner hereof as the absolute owner hereof for all purposes, and the Registrar shall not be affected by any notice to the contrary.

The Certificates are issuable in the form of fully registered Certificates without coupons in denominations of \$5,000 or any integral multiple thereof. The Certificates, upon surrender thereof at the Principal Office of the Registrar with a written request for exchange satisfactory to the Registrar duly executed by the registered owner or the owner's attorney duly authorized in writing, may be exchanged for an equal aggregate principal amount of fully registered Certificates without coupons of any other authorized denomination of the same maturity.

**Optional Redemption.** The Certificates maturing on \_\_\_\_ are subject to redemption, in whole or in part on or after \_\_\_\_, at a redemption price equal to the principal amount to be redeemed, plus accrue to the date fixed for redemption.

Such redemption may be made from moneys received due to the exercise by the County of its option to prepay Lease Payments pursuant to Article VIII of the Lease, including any moneys transferred from the Lease Payment Account to the Redemption Account for this purpose.

The Certificates shall be called for redemption in inverse order of maturity dates; if less than all Certificates maturing on the same dates are to be redeemed, the Certificates shall be selected by lot in such manner as the Trustee shall determine; provided that the portion of any Certificate to be redeemed shall be in the principal amount of \$5,000 or any integral multiple thereof.

When redemption is authorized or required, the Trustee shall give to the Certificate owners notice at the expense of the County of the redemption of the Certificates. Notice of such redemption shall be given by mailing copies thereof to the owners of the fully registered Certificates, first class postage prepaid, not less than thirty (30) days prior to said date of redemption. Failure to mail such notice shall not affect the validity of the proceedings for the redemption of the Certificates.

**Extraordinary Redemption.** Certificates are subject to redemption in whole at any time or in part from any net insurance or condemnation proceeds deposited with the Trustee for the purpose of redemption pursuant to Article VI of the Lease. Such redemption shall occur on any Business Day selected by the Trustee for which adequate notice may be given, at a redemption price equal to 100% of the aggregate principal amount of the Bonds to be redeemed plus accrued interest to the redemption date.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required by the Constitution and statutes of the State of South Dakota and the Trust Agreement to exist, to have happened and to have been performed precedent to and in the delivery of this Certificate, exist, have happened and have been performed in due time, form and manner as required by law.

IN WITNESS WHEREOF, this Certificate has been executed by the manual signature of an authorized officer of the Trustee.

Dated: November 1, 2020

**FIRST BANK & TRUST**  
As Trustee

By: \_\_\_\_\_  
Authorized Representative

### Bond Opinion

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November 1, 2020

RE \$7,260,000 Certificates of Participation, Series 2020 (Limited Tax General Obligation) evidencing proportionate interests of the owners of Certificates of Participation in a Lease-Purchase Agreement between First Bank & Trust and Brookings County, South Dakota.

Ladies and Gentlemen

We have acted as bond counsel in connection with the issuance of the obligations described above, dated, as originally issued, as of November 1, 2020 \$7,260,000 Certificates of Participation, Series 2020 evidencing proportionate interest of the owners in a Lease-Purchase Agreement (the "Certificates"), pursuant to a First Supplemental Declaration of Trust, dated as of July 18, 2012 (the "Trust Agreement") by First Bank & Trust, as trustee (the "Trustee") and joined in by County of Brookings, South Dakota (the "County"), for the purpose of providing funds to finance the construction or equipping of the Jail Renovation and Improvement Project.

We have not been engaged or undertaken to review the accuracy, completeness or sufficiency of the Official Statement or other offering material relating to the Certificates and we express no opinion relating thereto. All capitalized terms herein shall have the meaning set forth in the First Supplemental Declaration of Trust.

For purposes of rendering this opinion, we have examined certified copies of certain proceedings taken, and certain affidavits and certificates furnished by the County and the Trustee, including the following

- (i) the First Supplemental Declaration of Trust, dated November 1, 2020 (the "Trust Agreement");
- (ii) the First Amendment to Lease-Purchase Agreement, dated November 1, 2020 (the "Lease");
- (iii) the Supplemental Ground Lease, dated November 1, 2020 (the "Ground Lease");
- (iv) the Resolution adopted by the County Commission on April 4, 2012;
- (v) such other documents as we have deemed relevant and necessary as a basis for the opinions set forth herein, including the form of the Certificates.

As to questions of fact material to our opinion, we have assumed the authenticity of and relied upon the proceedings, affidavits and certificates furnished to us without undertaking to verify the same by independent investigation. From our examination of such proceedings, affidavits and certificates, and on the basis of existing law, it is our opinion that

1. The Trust Agreement, the Lease and the Ground Lease (the "Related Documents") have been duly authorized, executed and delivered by the parties thereto and constitute valid and legally binding agreements of the parties thereto enforceable in accordance with the respective terms thereof, except to the extent to which enforceability thereof may be limited by the exercise of judicial discretion or by state or federal laws relating to bankruptcy, reorganization, moratorium or creditors' rights.

2. The Certificates evidencing proportionate interests in the right to receive Lease Payments and certain other payments, revenues and receipts derived under the Lease, including certain funds, interest earnings, and insurance and condemnation proceeds, all in the manner set forth in the Trust Agreement. The County's obligation to make Lease Payments is absolute and unconditional.

3. The interest component of the Lease Payments to be received by the Owners of the Certificates is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax. The opinions set forth in the preceding sentence are subject to the condition that the County comply with all requirements of the Internal Revenue Code of 1986 as amended, that must be satisfied subsequent to execution of the Lease and the issuance of the Certificates in order that interest thereon be, or continue to be, excluded from gross income for federal income tax purposes. The County has covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the inclusion of interest component on the Lease in gross income for federal income tax purposes to be retroactive to the date of execution of the Lease. We express no opinion regarding other federal tax consequences arising with respect to the Lease or Certificates.

4. Under existing law, the interest component on the Lease is includible in "taxable income" for the State of South Dakota income tax purposes when the recipient is a "financial institution" as defined by Chapter 10-43, South Dakota Codified Laws, according to present state laws, regulations and decisions. We express no further opinions regarding other South Dakota tax consequences arising with regard to the Lease and Certificates.

5. The County has designated the Lease and the Certificates as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code.

It is to be understood that the rights of the holders of the Bonds and the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and that their enforcement may be subject to the exercise of judicial discretion in accordance with general principles of equity and subject to regulatory requirements under the laws of the United States and of the State of South Dakota.

Meierhenry Sargent LLP

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## EXHIBIT C SCHEDULE OF TRUSTEE'S FEES

1. Acceptance Fee. The Trustee shall be entitled to a one-time charge of \$\_\_\_\_\_ to cover the acceptance of the trust and the establishment of necessary accounts in its accounting system, the initial investment of the Certificate proceeds, Trustee's counsel and Trustee personnel time involved in closing the sale of the Certificates.

2. Annual Administration Fee. The Trustee shall be entitled to an annual charge of \$\_\_\_\_\_, to cover all accounting and preparation of statements in its standard format, and the general administration of the trust created hereby. The Trustee reserves the right to increase this fee as the market indicates.

3. Expense Reimbursement. The Trustee shall be entitled to reimbursement for all out-of-pocket expenses incurred in connection with the closing on the Certificates, including legal fees, travel expenses and other incidental costs; and for all other out-of-pocket costs, including legal fees, incurred in the administration of the trust in accordance with its provisions.

4. Fee Payment. Except as otherwise specifically provided in the Trust Agreement, all charges will be billed in arrears on or about each December 1 during the term of the trust.